THE HONOURABLE SRI JUSTICE
GHULAM MOHAMMED

M.A.C.M.A.NO.718 OF 2006

23rd APRIL, 2011

BETWEEN:

UNITED INDIA INSURANCE CO. LTD.,
REP. BY ITS DIVISIONAL OFFICER-XI,
2ND FLOOR, MALAKPET,
HYDERABAD .. APPELLANT

AND

POLA BHARATHAMMA
AND ANOTHER .. RESPONDENTS

**THE HONOURABLE SRI JUSTICE**
**GHULAM MOHAMMED**

**M.A.C.M.A.NO.718 OF 2006**

JUDGMENT:

This Civil Miscellaneous Appeal is filed by the insurance company aggrieved by the order-dated 24.7.2002 passed by V Additional Chief Judge, City Civil Court, Hyderabad in O.P.No.283 of 2000.

1st respondent is the injured and she filed the O.P. alleging that on 7.12.1999 at about 5.30 p.m. when herself and some others were travelling in the unregistered new auto of 2nd respondent-M.Umamaheshwar from Ibrahimpatnam to Polkampally on the way near Raipolu village, the driver of the auto drove it in high speed and in a rash and negligent manner, whereby he lost control over the vehicle and it overturned resulting in injuries to her and other inmates of the auto. She sustained fracture of shaft humurous and fracture of right hand both bones and took treatment in Osmania General Hospital for some time and later on in Chaithanya Nursing Home, Ibrahimpatnam by spending huge amount. The injuries resulted in permanent disability. The 1st respondent filed the claim petition before the Tribunal claiming compensation of Rs.1,20,000/-. It was pleaded by her that she was aged about 35 years as on the date of the incident and was working as a labourer and attending to household works and earning an amount of Rs.3,000/- per month.

The 2nd respondent, owner of the vehicle, remained *ex parte*. The appellant herein (insurer) filed counter and additional counter denying the averment that the 1st respondent - injured had spent huge amount towards

medical expenses. It is also stated in the counter that that the injured has to prove that the auto driver had valid licence to drive the auto as on the date of the accident, that the insurance policy issued by the appellant is in force and that the claim is exorbitant. It is further stated that since the auto in question is an unregistered auto, the driver of the auto would not have used it for passenger transportation and since he has used it in violation of Section 39 of M.V. Act., he alone is liable to pay the compensation, if any. The 2nd respondent denied the plea of the claimant that the accident took place on account of rash and negligent driving on the part of the driver and also denied the age and avocation of the injured. It was also pleaded that the amount of compensation claimed was highly excessive and exorbitant.

On the basis of the above pleadings, the Tribunal framed the following issues for trial:

1. Whether the petitioner sustained injuries in a motor vehicle accident on 7.12.1999 due to rash and negligent driving of 1st respondent's auto by its driver?
2. Whether the petitioner is entitled for compensation, if so, to what amount and from whom?
3. To what relief?

During the course of enquiry, on behalf of the claimant, she was examined as P.W.1 and Dr.S.Narsing Rao was examined as P.W.2. Exs.A1 to A11 were marked on behalf of the 1st respondent-petitioner. On behalf of the appellant-insurance company, R.W.1 A.Venkateshwarulu was examined and Ex.B.1, copy of the policy, was marked.

Before the Tribunal, the 1st respondent - injured got herself examined as P.W.1 and in her evidence she vividly narrated the allegations and marked the certified copies of the report given to the police by one of the eye witnesses as Exs.A1, charge sheet filed by the police against the auto driver as Ex.A2 and Medical certificate as Ex.A3. She further stated that she was aged about 35 years as on the date of the accident.

The Tribunal after analysing the evidence on record and on appreciation of the same, opined that the accident occurred due to rash and negligent driving on the part of the driver of the auto belonging to 2nd respondent and it accordingly awarded an amount of Rs.1,20,000/- as compensation with interest at 9% p.a. from the date of the petition till the date of realisation. Aggrieved by the award passed by the Tribunal, the appellant-insurance company filed the present appeal.

Sri.Ramachandra Reddy Gadi, learned Standing Counsel appearing for the appellant-insurance company contended that the Tribunal erred in fixing Rs.75,600/- towards disability, Rs.5,000/- towards pain and suffering, Rs.40,000/- towards medical expenses and Rs.5,000/- towards attendant charges, transportation and extra nourishment. He further contended that the basis adopted for determining the compensation is incorrect. The Tribunal has also erred in awarding interest at 9% per annum and it should have awarded interest at 6% per annum.

Learned counsel appearing for the 1st respondent/claimant on the other hand, supported the impugned award of the Tribunal and stated that the Tribunal while taking into account the age and earnings of the deceased, has rightly awarded the compensation as also the rate of interest at 9% per annum and the same does not require any interference.

The main contention advanced by learned Standing Counsel appearing for the appellant-insurance company is with regard to the rate of interest @ 9 % p.a. which is on higher side.

Having regard to the facts and circumstances of the case, the Tribunal is justified in awarding the compensation as claimed. However, this Court is of the view that the rate of interest awarded by the Tribunal at 9% per annum is excessive and ends of justice would be met if the rate of interest is reduced to 6% per annum.

The appeal is accordingly allowed in part. The rate of interest

awarded by the Tribunal is reduced from 9% to 6% per annum from the date of petition till the date of realisation. No costs.

_____

GHULAM MOHAMMED, J

Date: 24-03-2011.

TNB

**THE HONOURABLE SRI JUSTICE**
**GHULAM MOHAMMED**

**M.A.C.M.A.NO.718 OF 2006**

**Dated: 23-4-2011.**